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UNCLAS SECTION 01 OF 02 BANGKOK 003521

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DEPARTMENT FOR EAP/BCLTV. HQ USPACOM FOR FPA HUSO

E.O. 12958: N/A

TAGS: [PGOV](#) [TH](#) [NCCC](#)

SUBJECT: THAILAND: NATIONAL COUNTER CORRUPTION  
COMMISSIONERS RESIGN AFTER CONVICTIONS FOR UNAUTHORIZED PAY  
RAISES

11. (SBU) Summary: On May 30, eight commissioners of the National Counter Corruption Commission (NCCC) resigned under a cloud. A ninth commissioner had resigned earlier, shortly after the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions ruled (6 to 3) on May 26 that the NCCC had wrongfully and dishonestly abused their office by intentionally skirting the law and awarding themselves a pay raise. The Court sentenced all nine NCCC commissioners to 2-years imprisonment but suspended the jail terms in recognition of previous long-standing service to the country. Incredibly, most of the commissioners apparently thought they could stay in office, but parliamentary and public outcry -- and pressure from Prime Minister Thaksin -- forced them out. This case focuses attention on and raises questions about other constitutionally-mandated "watchdog" bodies which have also given themselves raises. End Summary.

PARLIAMENTARIANS ISSUE PETITION AGAINST NCCC

12. (U) On May 26, the 9-member Supreme Court of Justice's Criminal Division for Persons Holding Political Positions ruled by a vote of 6 to 3 that all 9 members of the National Counter Corruption Commission (NCCC) had wrongfully, dishonestly and intentionally awarded itself pay raises. The case had been simmering since September 2004 when Senator Dr. Chirmsak Pinthong discovered during a budgetary debate that NCCC had issued a "regulation" in July 2004 giving all commissioners a pay raise, including an additional monthly allowance of Baht 45,500 for the Chairman and Baht 42,500 for the others. These new allowances raised the total monthly salary and allowances to Baht 154,000 for the Chairman and Baht 147,000 for the other commissioners, levels above those received by the Prime Minister (Baht 115,920) and all other ministers, senators and congresspersons. As a consequence of this discovery, 203 Parliamentarians (108 senators and 95 members of Parliament, including one MP from the Thai Rak Thai Party) led by Senator Pratin Santiprabhob, Chairman of Senate Extraordinary Committee Investigating Corruption, sent a petition through the President of the Senate on October 6, 2004 to the appropriate court to initiate proceedings against the NCCC.

CONVICTION AND SUSPENSION OF SENTENCE

13. (U) The Supreme Court reviewed the case and focused principally on the charges as contained in the petition, i.e. malfeasance charges and alleged abuse by the NCCC of its authority in awarding itself the pay raises. After investigations, and testimony by the commissioners, the Court found that the NCCC had given itself new benefits even though it understood it had no legal authority to do so. The Court noted that Article 253 of the Constitution provides that "salaries, emoluments and other benefits of judges shall be provided by law," not by the method of "regulation" used. Article 253 specifically stipulates that its provisions apply to NCCC commissioners. The Court therefore convicted all NCCC members and sentenced them to 2-years imprisonment. The Court suspended the jail sentences for two years in recognition of the commissioners' previous positive records.

NCCC COMMISSIONERS LINGER DESPITE VERDICT

14. (U) This landmark verdict initially threw the NCCC into a state of confusion because it did not specifically remove all nine-members of NCCC from office. One commissioner resigned on May 27, but the others clung to office, with their supporters citing a Constitutional Court precedent from 1999 involving Newin Chidchob, who then (as he is now) was Deputy Minister of Agriculture and Cooperatives. In 1999, the Provincial Court of Buri Ram had convicted Newin on a defamation charge, given him a sentence of six months' imprisonment, but suspended it for one year. The Constitutional Court had then judged the suspended term to be merely nominal, which allowed Newin to remain in office. Some NCCC Commissioners and their supporters initially argued that the Newin judgment was applicable in their case and that they could continue in office, despite conviction, in accordance with the Articles 260 and 298 of the Constitution.

The problem of the NCCC commissioners was further compounded by Article 300 (para 3) of the Constitution which specified that once a case is referred to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions for trial and adjudication (which Newin's had not been), the accused shall not perform their duties until this Supreme Court dismissed the case. In the NCCC matter, the Supreme Court had handed down a verdict. Armed only with these thin technical arguments, NCCC members seemed ready to try to remain in office after conviction and when the law prohibited them from performing their duties.

#### ALL RESIGN AFTER PUBLIC OPINION TURNS

15. (SBU) The convicted NCCC commissioners weathered a few day of fierce public debate -- probably the most intense debate on contradictions in the 1997 Constitution since it was adopted -- before stepping down on May 30. Although the opposition Democrats (DP) led the calls for resignation, PM Thaksin weighed in heavily for resignation as well despite the fact that all the commissioners were selected during his first administration and were generally regarded as choices he had favored. The NCCC resignations open the way for selection of new commissioners, but the process is likely to be difficult. Article 297 of the Constitution requires selection of new nominees to be made by representatives of five political parties with members in the Parliament. After the overwhelming TRT victory in last February's elections, only four political parties have members in Parliament, including Mahachon which only elected two MPs. To proceed with selection of new commissioners, the Constitution will have to be amended beforehand.

16. (SBU) Comment: This involvement of the NCCC in controversy is a blow to the prestige and credibility of other constitutionally-mandated independent "watchdog" bodies. It is open knowledge that the Election Commission of Thailand, the Constitutional Court and the Office of the Ombudsman have all awarded themselves income increases using similar methods to those of the NCCC. All seem vulnerable to formal charges. Though for some observers, the dispute over the raises was complex and fell into a gray area in which the constitutional bodies might have been understood to be empowered to direct their budgets, the court decision and the public outcry were very black and white and condemning. End Comment.  
ARVIZU